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Paper No. 4

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OFFICE OF PETITIONS

In re Application of
J.J. Holst et al.
Application No. 10/055,259
Filed: October 26, 2001
Attorney's Docket No. P03987US1

ON PETITION

This is a decision on the petition filed June 21, 2002, under 37 CFR 1.182 requesting that the above-identified application retain the original filing date of parent application 09/333,415 of June 15, 1999, with Page 7 of the specification, as originally filed.

The petition under 37 CFR 1.182 is **GRANTED to the extent indicated below.**

The application was filed on October 26, 2001. On April 30, 2002, a Notice of Omitted Items in a Nonprovisional Application was mailed stating that Page 7 of the specification (description and claims) appeared to have been omitted.¹

In response, on June 21, 2002, the present petition was filed, accompanied by a copy of Page 7 of the specification as well as a petition fee of \$130.00. Petitioners argue that Page 7 was filed with the other application papers on October 26, 2002. In support, a postcard receipt shows an Office date stamp of October 26, 2002, and the above-identified application number, identifies the application by the first inventor's name and attorney's docket number, and acknowledges receipt of, *inter alia*, 26 pages of the application (specification, abstract, and claims). Petitioners request that the application, including Page 7 of the specification, be allowed to maintain the filing date of June 15, 1999.

¹The Notice of Omitted Items was included with a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures. The petition filed June 21, 2002 was also in response to the Notice to Comply and provided a paper copy of the Sequence Listing, a computer readable copy of the Sequence Listing and a Declaration that the content of the paper and computer readable copies are the same and include no new matter, pursuant to the requirements of 37 CFR 1.821-1.825.

A review of the record reveals that no Page 7 of the specification has been located among the application papers deposited on October 26, 2001. However, the evidence is convincing that the application papers filed October 26, 2001, included Page 7 of the specification. Therefore, the application, including Page 7 of the specification, is entitled to maintain the filing date of October 26, 2001.

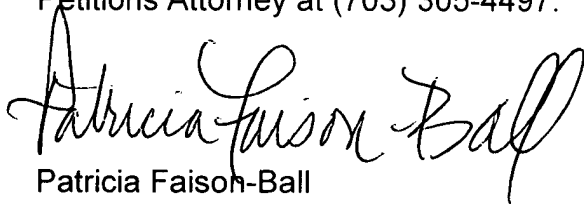
It should be noted however that by supplying the missing page of the specification, the application is entitled to retain the filing date of October 26, 2001 **but not the filing date of the parent, June 15, 1999**. The filing date of a divisional application is the date on which a request on separate paper for an application under 37 CFR 1.53 is filed.

In view of the above, the petition as it pertains to the omitted items is granted. The petition fee is unnecessary and will be credited to counsel's deposit account no. 26-0084.

The application will be processed and examined using the copy of Page 7 of the specification supplied June 21, 2002.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 26, 2001, using the application papers filed on that date and the copy of Page 7 of the specification supplied on June 21, 2002.

Telephone inquiries regarding this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is fluid and cursive, with the first name "Patricia" being the most prominent.

Patricia Faison-Ball
Senior Petitions Attorney
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Office of the Deputy Commissioner
for Patent Examination Policy